IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13865 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IQBAL GAFARBHAI SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 13865 of 2004

MR JK PARMAR for Petitioner No. 1

MR HANSA B PUNANI AGP for Respondent No. 1-2,3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 22/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 17th of September, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 17th of September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of material to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration the fact of filing three criminal cases against the petitioner for the offences punishable under Sections 392, 394 and 397 of the Indian Penal Code, and secondly the detaining authority took into consideration two in-camera statements of witnesses, whose identity is not disclosed to the detaining authority claiming privilege under Section 9(2) of the PASA Act.

3. In all three cases came to be registered against the petitioner under Sections 392, 394 and 297 of the Indian Penal Code, before Gomatipur Police Station, on 8th of June,2004 and second also before Gomatipur Police Station on 4th of July, 2004 and third before Aslali Police Station on 12th of July, 2004. All those cases are pending before the Court. It is alleged in all the cases that the petitioner was engaged in activities of committing robberies in respect of gold ornaments and other articles. The detaining authority considered exhaustively and thoroughly the investigation papers in all the cases registered against the petitioner and came to the conclusion that the petitioner was a habitual offender of committing the offences of robbery.

4. Secondly, the detaining authority relied upon two in-camera statements, recorded by the sponsoring authority on 11th of September, 2004, and verified by the detaining authority on 14th of September, 2004. The first witness referred to an incident occurred on 12th of June 2004. The witness was standing near Bombay Hotel at Dani Limda area and he was approached by the petitioner at about 5.00 p.m. on that day. The petitioner stated to the witness that the witness was keeping watch on the activities of the petitioner about committing robberies and the witness was providing such information to the Police. The witness refused the allegations levelled by the petitioner. On refusal of the witness, the petitioner got excited, caught hold of the witness and in

public place, started beating him. The witness raised shouts for help, which attracted crowd of traders of the locality and passers-by. On noticing the crowd, the petitioner took out a knife and threatened the witness to kill. The witness was frightened and thereafter the petitioner rushed towards the crowd with open knife and on account of fear of the petitioner, people started running helter - skelter. The traffic was disrupted. Normal life was disturbed. Atmosphere of terror was created.

5. The second witness referred to an incident occurred on 28th of June, 2004. The petitioner approached the witness at the business place of the witness at 12.00 pm. on that day with one golden chain. The petitioner stated that he needed money and insisted that the witness should purchase the said gold chain. Witness knew that the petitioner was engaged in activities of committing robberies and, therefore, he refused to purchase the said gold chain. On refusal of the witness, the petitioner was excited and started abusing the witness. The witness was dragged in public place and was beaten. To save himself from beating, the witness raised shouts, which attracted crowd of residents of the locality, traders and passersby. On noticing of gathering of the crowd, the petitioner took out a knife and threatened the witness to kill. Thereafter, the petitioner rushed towards the crowd giving them abuses with open knife, and on account of fear of the petitioner, people started running helter - skelter and the traffic in the area was disrupted. An atmosphere of fear created and persons started feeling insecurity.

6. Relying upon the above material, the detaining authority came to the conclusion that the petitioner was engaged in illegal activities of committing robberies and was a habitual offender. The detaining authority also came to the conclusion that the petitioner was a dangerous person within the meaning of the PASA Act. The detaining authority also came to the conclusion that the petitioner was headstrong, ferocious and dangerous person and was keeping deadly weapons with him. It was also alleged against the petitioner that he formed a gang of headstrong persons and along with such gang, was committing the offences. It was also alleged against the petitioner that he was in habit of picking up quarrels with the innocent citizens and to beat them. On account of the activities of the petitioner, fear and terror was spread among the locality. The detaining authority also came to the conclusion that the illegal activities of the petitioner were prejudicial to the maintenance of public

order and such activities were required to be prevented forthwith. After considering other alternative remedies available against the petitioner under the general law, the detaining authority came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act as dangerous person to prevent his illegal activities forthwith. The detaining authority therefore passed the order of detention of the petitioner, as aforesaid, which is under challenge in this petition.

7. Learned Advocate Mr.J.K.Parmar for the petitioner and learned AGP Ms.Hansa B Punani for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record was also taken into consideration.

8. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed.

9. To reach to the subjective satisfaction that the dangerous activities of the petitioner were prejudicial to the maintenance of public order, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

10. True that as many as three criminal cases came to be filed against the petitioner for the robberies committed by him. It was also alleged that the petitioner committed robberies in respect of golden ornaments and other articles. The detaining authority took into consideration the investigation papers in all these three cases. Therefore, the prime issue for consideration is, the activities reveal through the investigating papers in all three cases, can be branded to be activities disturbing the public order as noted above. Undoubtedly, these three cases came to be filed against the petitioner for committing golden ornaments.

These cases are pending for disposal according to law. The activities disclose through the investigating papers in these three cases may be an offence being the activities against penal statute of country, but it could not at all be said that the activities of the petitioner reveal through the investigating papers formed an offence under the penal law are the activities disturbing the public order to the extent that widespread danger to life and property could be inferred. At the most filing of these cases being offences may be labelled as breach of law and order for which the petitioner is going to be tried and may be punished, if found guilty. But as aforesaid, the act constituting the offence cannot be said to have affected the even tempo of life of community, therefore, filing of the cases may be three in numbers against the petitioner, have no bearing at all on the question of maintenance of public order.

11. The rest of the material, which relied upon by the detaining authority is in the form of two incamera statements. While any activity is to be judged within the scope, as to whether such activities disturbed the public order, it becomes the duty of the detaining authority to consider fall out, reach and impact of the activities, revealing through materials placed before him and then come to the conclusion that whether potentiality of the activities alleged was capable of disturbing the public order. On going through minutely and carefully and applying the above said principle of law, it clearly appears that the two incidents narrated through incamera statements were more individual disputes than to involve the society at large or disturbing the even tempo of life of the community. Employing phrases by the witnesses like disruption of traffic and normal life and spreading of fear and terror, or employing such phrases by the detaining authority in the reasons, could not stretch the alleged activities to the extent of such activities disturbing the public order. While such activities are scanned through its fall out, reach and impact, it is clear that these are not the activities disturbing the public order. Therefore, the potentiality of the act alleged through incamera statements, even from the bare reading of them, do not disclose capability to disturb the even tempo of life of the community or society at large or section of the society. It is clear that neither widespread danger to the society nor dangerousness or harmfulness affecting the society could be inferred from such activities of the petitioner disclosing through incamera statements. Therefore, even after taking two incamera statements on their face value, they are unable to convince that the activities disclosed

by the statements were prejudicial to the maintenance of public order. At the most the acts disclosed through the statements, may be breach of law and order and could be taken care by the general law.

12. In the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000 (1) G.L.H. 393, wherein after considering many decisions of the Apex Court, the Division Bench of this Court has observed in paragraphs No.20 and 21 as under.

> "20. The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and T. Devaki v. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly, in T. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was high lighted. It was also alleged that people were scared and had run helter skelter. In spite of such allegations the Supreme Court held that they were not cases of maintenance of public order and hence, an action of preventive detention was uncalled for.
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> 21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.
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> Again, in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

13. The present set of facts are squarely covered by

the above said decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki [supra]. In this view of the matter, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner, cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

14. In the result, the petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 17th September, 2004 against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Iqbal Gafarbhai Shaikh is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

(J. R. VORA,J.)

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